IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS.128, 129, 130 AND 131 OF 2006

CRIMINAL MISCELLANEOUS APPLICATION NO.128 OF 2006

Shri Shekhar D. Pol,
presently in Judicial
Custody at Mapusa-Goa. ... Applicant

versus

State(through P.I.
attached to Mapusa
Police Station). ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 129 OF 2006

Shri Rupesh Mohan Parab,
presently in Judicial
Custody at Mapusa, Goa. ... Applicant

versus

State(through P.I. attached
to Mapusa Police Station) ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 130 OF 2006

Shri Swapnil Uttam Gadekar,
presently in Judicial Custody
at Mapusa, Goa. ... Applicant

versus

State(through P.I. attached
to Mapusa Police Station) ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO. 131 OF 2006

Shri Mohan Jayawanth
Kalangutkar, presently
in Judicial Custody at
Mapusa-Goa. ... Applicant

versus

State(through P.I. attached
to Mapusa Police Station) ... Respondent

Mr. Menino Teles, Advocate for the Applicants.

Mr. S. N. Sardessai, Public Prosecutor for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 3RD MARCH, 2006.

ORAL ORDER

Heard Mr. Menino Teles, the learned Counsel on behalf of the applicants who are Accused nos.4 to 7 in Sessions Case No.30/2005.

2. The said applicants have approached this Court for bail after their prayer for bail was rejected by the learned Additional Sessions Judge, Panaji, by Order dated 28-12-2005.

3. Rajan Pannikar aged about 45 years was found murdered on 14-5-2005 at about 23.40 hours with a stone on his chest and another besides him, in front of Subodh Bar near Sirsaim Railway Station. Presumably, the deceased was crushed with the said stones. As stated by the Medical Officer who conducted the post mortem of the deceased, the death of the deceased was due to the crushing of the face and the head which was fatal.

4. It appears that till date, who threw the said stones on the deceased and crushed him to death in that manner, has

eluded the Police and this fact does not appear to have been established at all, by any direct evidence.

5. Initially, a charge-sheet was filed on 10-8-2005 against three persons namely, A-1/Jimina, A-2/Chaku and A-3/Jiji James and A-1/Jimina and A-3/Jiji James were admitted to bail by the learned Additional Sessions Judge by Order dated 24-8-2005 and A-2/Chaku thereafter.

6. Then a supplementary charge-sheet was filed on 9-12-2005 against the applicants herein who are now arrayed as A-4 to A-7, but when these applicants approached the Court of Sessions for bail their applications came to be rejected by Order dated 28-12-2005.

7. What made the learned Additional Sessions Judge reject their applications for bail is the fact that the applicants were charged with offences of serious nature and that they were absconding, and, therefore, there was every possibility of they fleeing from justice. It was also observed by the learned Additional Sessions Judge, that the material had showed prima

facie involvement of the present applicants in the crime. However, it is to be noted that as far as the first three Accused were concerned, who were admitted to bail by Order dated 24-8-2005, the learned Additional Sessions Judge had observed that merely because Ravi Pillai had made a singular statement that A-2/Chaku and A-1/Jimina and A-3/Jiji James and the occupants of the maruti van had assaulted the deceased Rajan, that would not lead to draw a prima facie conclusion that the death of the deceased Rajan was caused due to the impact of blunt force object(a stone) on account of the alleged assault by the applicants namely, A-1/Jimina and A-3/Jiji James.

8. Be that as it may, it appears from the First Information Report lodged by Sunil C. Mandrekar that at about 21.45 hours there was a fight between the group of the deceased consisting of one or two more persons on one side, and the group of A-2/Chaku with five or six persons on the other side, and after some persons intervened, the said fight was stopped, and, it is stated by the said Sunil C. Mandrekar that the deceased had then stated that he would show them within 10 minutes and thereafter both the groups had dispersed.

Thereafter, after an hour or so, the deceased appeared on the scene with two others, (who according to the learned Public Prosecutor Mr. Sardessai are Sadish Vasudev and Ravi Pillai) and the fight was resumed and at that time the said Sunil C. Mandrekar saw two persons standing near the deceased and the deceased bleeding and he closed his Bar and went to call the Police but could not get through number 100 and, therefore, phoned the Mapusa Police Station and at that time both the persons who were near the deceased went away on a motor-cycle towards Assonora and when he returned he saw the deceased with a big stone on his chest and another lying by his side. As per the version given by the said Sadish Vasudev when the deceased Rajan challenged the said A-2/Chaku and his friends to come on the road, A-2/Chaku came on the road and there was a fight between the deceased Rajan's group and the deceased Chaku's group and they started abusing and pushing one another and at this time, according to him, a maruti van bearing no.GA-01-N-3103 came from Tivim Railway Station and stopped near the place where the fight was going on and three persons from the said van who were locals in the age group of 20 to 25 years stated in hindi as to why they were blocking the road and started

assaulting the deceased Rajan and he(Sadish Vasudev) went to rescue deceased Rajan from the assault but he too was assaulted and he jumped across the wall and escaped. According to the Investigating Agency, the present applicants are the persons who came in the said maruti van bearing no.GA-01-N-3103, and, if according to Sadish Vasudev there were three of them who came out of the maruti van, according to another witness by name Ravi Pillai there were about seven of them who got down and asked A-3/Jiji James as to what had happened and to which A-3/Jiji James is stated to have replied that they should beat the deceased Rajan and at this time A-2/Chaku, A-3/Jiji James, A-1/Jimina and the persons who had come in the said maruti van joined the assault to beat the said deceased Rajan and due to the assault the deceased Rajan fell down on the road. The said witness Ravi Pillai has stated that he too got frightened of the threats given by the occupants of the maruti van and, therefore, left from the place.

9. As already stated, the investigation agency appears to be still in the dark as not to know as to who crushed the deceased to death with the said two stones. Admittedly, the

occupants who came in the maruti van were unknown to the group of the deceased and the group of A-2/Chaku who are stated to be the natives from Kerala. Till date, no identification parade has been held to identify the occupants of the maruti van. It has been submitted by Mr. Sardessai that two witnesses namely, Sadish Vasudev and Ravi Pillai are absconding and for that reason no identification parade could be held. However, there is no explanation forthcoming as to why Ashok Balkrishna and Chandu Fatorde who are also stated to have witnessed the incident, have not been called upon to identify the occupants of the maruti van.

10. The only evidence/material which is available today against the applicants is an extra judicial confession which is supposed to have been made to Laxman S. Gad. In his statement recorded on 17-5-2005 the said Laxman S. Gad has stated that on 14-5-2005 he met A-4/Swapnil Gadekar and A-5/Rupesh Parab at the residence of the latter which is opposite to his house, and at that time A-4/Swapnil and A-5/Rupesh told him that they had been to Tivim Railway Station along with two others namely, A-6/Shekhar and A-7/Mahesh Dhond in a maruti

van bearing no.GA-01-N-3103 belonging to Vincy D'Mello and while returning they noticed that some Kerala people were fighting near the Bar of Sunil and they had intervened in the fight and had beaten the Kerala people and fled away from the spot in a maruti van and that they were proceeding somewhere so that the Police may not catch them.

11. As already stated, the applicants herein namely, A-4 to A-7 are stated to have come in the said maruti van and the said statements made by A-4/Swapnil and A-5/Rupesh to the said witness at the most show their involvement in the fight and certainly not as assailants who caused the death of the deceased with stones. It is not the case of the Investigating Agency that the occupants of the maruti van crushed the deceased with stones to death.

12. I have set out the facts, as they appear today from case papers inspite of the fact that learned Public Prosecutor Mr. Sardessai has no objection for bail being granted to the present applicants.

13. It is not only the nature of the charge which matters, at the time of considering an application for bail, but the nature of evidence as well with which the charge is sought to be supported. Till date, what the Investigating Agency has against two of the applicants namely, A-4/Swapnil and A-5/Rupesh is the said extra judicial confession made by them to the witness Laxman Gad which certainly does not involve either two of them or the remaining two of the applicants directly in the murder of the deceased.

14. Considering that the Investigating Agency has not been able to establish as to who was directly responsible for causing the death of the deceased by stones and the nature of evidence discussed herein above, and in the absence of the present applicants being identified as occupants of the maruti van in my view, this would be a fit case to admit the applicants to bail. Consequently, the applications are granted. Each of the applicants shall be released on bail upon execution of a bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Panaji.

15. Before parting I must observe that although, charge-sheet has been filed against the accused, it is not late in the day to carry out further investigations to find out as who were the assailants who caused the murder of the deceased by crushing him with the said two stones and file a supplementary charge-sheet, which the Police if willing, are certainly entitled to do.

Order accordingly.

N. A. BRITTO, J.

RD